

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

\* \* \* \* \* C.A. NO. 00-105L  
EFRAT UNGAR, et al \*  
VS. \* NOVEMBER 19, 2010  
\* 2:05 P.M.  
\*  
THE PALESTINIAN \*  
LIBERATION ORGANIZATION, \*  
et al \*  
\* PROVIDENCE, RI  
\* \* \* \* \*

BEFORE THE HONORABLE RONALD R. LAGUEUX  
SENIOR JUDGE  
(Motion for Preliminary Injunction)  
VOLUME II

**APPEARANCES:**

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13 Proceeding reported and produced by  
14 computer-aided stenography  
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1 19 NOVEMBER 2010 -- 2:05 P.M.

2 THE COURT: Good afternoon, everyone. Will the  
3 attorneys identify themselves for the record again,  
4 please.

5 MR. STRACHMAN: David Strachman for the  
6 Plaintiffs-Judgment Creditors.

7 MR. WISTOW: Max Wistow for the Plaintiffs.

8 MR. HILL: Good afternoon, Your Honor.  
9 Brian Hill for the Defendants.

10 MR. SHERMAN: Deming Sherman for the Defendants.

11 THE COURT: The matter before the Court in this  
12 case, Ungar v. The Palestinian Authority, Civil  
13 Action 00-105L, is a request for preliminary injunction  
14 by the Plaintiffs against the Palestinian Authority  
15 from taking any actions to collect or enforce any debt  
16 owed by Orascom Telecom to the Palestinian -- Palestine  
17 Investment Fund, PIF, until the judgment entered in  
18 this action on July 13, 2004, is satisfied in full or  
19 until further order of Court.

20 The standard for determining whether to issue a  
21 preliminary injunction is well established in the First  
22 Circuit, and I'll cite two cases where I was the Trial  
23 Judge: Ross-Simons of Warwick, Inc., v. Baccarat,  
24 Inc., 102 Fed 3d 12, First Circuit 1996; and  
25 Narragansett Indian Tribe v. Guilbert, G-u-i-l-b-e-r-t,

1 934 Federal 2d 4, First Circuit 1991. And there's been  
2 a whole raft of other cases.

3 The Plaintiff, in order to get a preliminary  
4 injunction, has to satisfy a four-part test. The first  
5 part is that there's a likelihood of success on the  
6 merits; the second is the potential for irreparable  
7 harm if the injunction is denied; third, the balance of  
8 relevant impositions to hardship to the non-Movant if  
9 enjoined, as contrasted with the hardship to the Movant  
10 if no injunction issues; and, finally, the effect, if  
11 any, of the Court's ruling on the public interest.

12 What is significant in this case is that, after  
13 the Court issued its judgment on a Creditor's Bill  
14 awarding the ownership of what I will call the first  
15 PIF to the Plaintiffs because the sole owner was the  
16 Palestinian Authority, the Palestinian Authority and  
17 its officers later created what I call the new PIF.

18 The Plaintiffs took control of the first PIF,  
19 but they've had no way of taking control of the new  
20 PIF. And it's the new PIF that is operating now as an  
21 arm of the Palestinian Authority.

22 Let me state right now that, no matter what the  
23 motive was for creating the new PIF, there was nothing  
24 wrong with the PA creating a new PIF so it could  
25 acquire funds for its operations in the Middle East.

1           And it's the new PIF that's involved here. Of  
2       course this Court has no jurisdiction over the new PIF,  
3       and an Egyptian Court has ordered Orascom to pay its  
4       debt of some 45 million to, I presume, the new PIF. I  
5       haven't seen that judgment.

6           So what the Plaintiffs want me to do is to  
7       preliminarily enjoin the PA from doing anything by way  
8       of interference in the new PIF collecting that debt.  
9       Its motive for doing that is unclear to me. If I  
10      enjoin the PA from doing anything, what if the new PIF  
11      transfers some of those funds to the PA to allow the PA  
12      to perform its operations?

13          The Plaintiffs have done a lot in the courts in  
14      Israel. They've succeeded in freezing large sums of  
15      money that the country of Israel would normally pay to  
16      the PA to allow the PA to continue its operations and  
17      perform its functions.

18          So there is -- although that is still in some  
19      litigation, those funds are frozen, and the PA has no  
20      way of getting that money at the moment unless that  
21      order gets reversed by the Supreme Court of Israel. So  
22      I can understand why they created the new PIF, so they  
23      would have a way of getting funds to operate.

24          I won't keep you in suspense. I am not going to  
25      issue a preliminary injunction in this case against the

1 PA because the Plaintiffs have failed to satisfy at  
2 least three of the parts of the four-part framework.

3 First of all, there's been a failure to show  
4 that these Plaintiffs would succeed on the merits in  
5 somehow getting control of those funds. They've had  
6 ample time to try to do that in the appropriate courts  
7 in the Middle East but have failed to do that.

8 And if I granted the injunction to the PA, the  
9 argument would be made that the new PIF could not  
10 transfer funds to the PA, and that would not be my  
11 intention at all, to prevent that. And it would be a  
12 round-about way of getting me to enjoin the new PIF.  
13 That would be the net effect of it.

14 Secondly, there -- as I see it, there is no  
15 potential for irreparable harm to the Plaintiffs. They  
16 have an adequate remedy at law. This involves money,  
17 not some unique object, and they already have that  
18 attachment, or whatever it may be called, of Israel's  
19 debt to the PA. And they have adequate remedy at law  
20 in the Israeli courts.

21 The third standard, what Judge Selya sometimes  
22 calls the balancing of equities, is really the  
23 balancing of harms. And, again, for the same reason, I  
24 think there would be great harm done if this injunction  
25 was issued to the Palestinian Authority and the PIF,

1 the new PIF, while there's a minimum of harm to the  
2 Plaintiffs.

3 The Plaintiffs can still pursue various  
4 attachment remedies in the Israel courts, and they  
5 still have that frozen block of cash available to pay a  
6 judgment in this case.

7 As I've said throughout, this is a Court of  
8 limited jurisdiction generally and specifically in this  
9 case because it only has jurisdiction over the PA.

10 The Court has gone about as far as it can go in  
11 granting the Creditor's Bill to reach and apply the  
12 PA's sole interest in the old PIF. I don't know what  
13 that resulted in, in terms of securing assets.

14 It would only be a fraud on the Court if the PA  
15 managed to siphon assets out after the Plaintiffs took  
16 control through the new PIF. But based on the evidence  
17 that I have before me, which is limited, it seems to me  
18 the new PIF is only dealing with new funds, which  
19 includes this \$45 million.

20 So, for all those reasons, I am denying the  
21 Plaintiff's motion for a preliminary injunction against  
22 the Palestinian Authority from collecting or enforcing  
23 any debt owed by Orascom to the Palestinian Investment  
24 Fund, the new Palestinian Investment Fund, or to the  
25 Palestinian Authority.

1           If circumstances change or there's new or better  
2 evidence secured by the Plaintiffs, the Plaintiffs can  
3 move to set the matter down for hearing on permanent  
4 injunction.

5           There are cases where the Court in the past has  
6 denied a motion for preliminary injunction and then  
7 when the case was heard on the merits on permanent  
8 injunction, the Court found enough evidence to issue a  
9 permanent injunction. The Narragansett Indian Tribe v.  
10 Guilbert is one of those examples. And Judge Selya  
11 affirmed me in that case.

12           The party losing the battle on likelihood of  
13 success on the merits with respect to a claim for  
14 preliminary injunction may nevertheless win the war at  
15 the succeeding trial on the merits.

16           So I will not issue a preliminary injunction,  
17 and I will not set the matter down for permanent  
18 injunction unless one of the parties makes a motion to  
19 that effect.

20           That's the order of the Court.

21           The Clerk will note that in the minutes.

22           Are there any comments anyone wishes to make?

23           MR. WISTOW: No, Your Honor, except thank you  
24 for seeing us at your home on the TR0.

25           THE COURT: You're welcome.



1 MR. HILL: Nothing at this time, Your Honor.

2 THE COURT: All right. We'll take a recess.

3 (Court concluded at 2:18 p.m.)

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6 C E R T I F I C A T I O N

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11 I, Debra D. Lajoie, RPR-FCRR-CRI-RMR, do  
12 hereby certify that the foregoing pages are a true and  
13 accurate transcription of my stenographic notes in the  
14 above-entitled case.

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19 /s/ Debra D. Lajoie

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